

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1133 OF 2021
IN
CRIMINAL APPEAL NO. 463 OF 2021

Raju Ramesh Nikam
@ Kailash Asru Bankar,
Age. 41 years, Occ. Nil,
Bagsevniya, Bhopal (M.P.),
At Present residing at Plot No. 34,
Renuka Nagar, Mehrun, Jalgaon.Applicant

Versus

1. The State of Maharashtra,
Through PSO, MIDC Police Station,
Jalgaon, Dist. Jalgaon.
2. XYZ. ... Respondents

Advocate for Applicant : Mr. Parag P. Shahane
APP for Respondent No. 1 / State : Mr. A.M. Phule
Advocate for Respondent No. 2 : Mr. B.B. Gunjal

**CORAM : SMT. VIBHA KANKANWADI &
RAJESH S. PATIL, JJ.**

DATE : 28th SEPTEMBER, 2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1. Heard learned Advocate for the applicant, learned APP as well as learned Advocate for respondent No. 2.
2. Present application has been filed for suspension of

substantive sentence imposed on the applicant. The applicant has been held guilty of committing an offence punishable under Sections 5 (m) and 6 of Prohibition of Children from Sexual Offence Act, 2012 and under Sections 376 (2) (I), 450 of the Indian Penal Code, by the learned Special Judge, (POCSO) Act / Additional Sessions Judge, Jalgaon on 12.01.2018 in Special Case (POCSO) Act No. 43 of 2016. The appellant/applicant has been sentenced thus.

3. Charge was framed against the applicant for the offence punishable under Section Sections 5 (m) and 6 of Prohibition of Children from Sexual Offence Act, 2012 and under Sections 376 (2) (I), 450 of IPC. He denied the charge and claimed to be tried. Defence of the accused is of false implication and of total denial.

4. To prove the charge, prosecution examined 12 witnesses. Accused neither enter into witness box nor examined any witness. P.W. 1, is victim minor girl, P.W. 2 in Member of Mahila Dakshata Samiti, P.W. 3 is Panch witness, P.W. 4 – is carrier, P.W. 5 – Medical Officer, P.W. 6 and P.W. 8 are carriers, P.W. 7 and P.W. 9 are Medical Officers, P.W. 10, P.W. 11 and P.W. 12 – are Police Officers.

5. The statement of accused under Section 313 of Criminal Procedure Code is recorded. Accused pleaded not guilty. The defence of the accused is of total denial.

6. The learned Advocate for the applicant further submits that the accused was an under trial prisoner and since the date of his arrest, he is in jail. With such kind of evidence, he could not be asked to languish in jail as he has every hope of success in the appeal. Therefore, the sentence needs to be suspended.

7. Learned APP supports the reasons given by the learned Special Judge, (POCSO) Act / Additional Sessions Judge, Jalgaon, and submits that since the appellant was an under-trial prisoner and was not released on bail throughout the trial, no sympathy can be shown to him.

8. At this stage, we are required to consider the *prima facie* evidence. Whether the evidence of the victim is full of contradictions and whether the victim being child witness was tutored, can be considered at the stage of hearing of the appeal. What is to be considered is that P.W. 1 – Victim deposed that she was residing with her grand mother at her hut. The incident took place on 16th night in the rainy days when she was sleeping in the house along with her two young brothers and grand mother. The latch of the house was not working. The victim is a minor having no parental support and use to beg for food for her family. The evidence of the victim is natural, reliable and it gets corroboration from the evidence and medical officers and other witnesses. The victim's statement is recorded by lady police officer and in presence of member of Mahila Dakshata Samiti. Considering the age of the

victim was appears to be no intention to implicate the accused falsely. The accused has failed to rebut presumption. The accused has not stepped in the witness evidence to lead evidence.

9. P.W. 2 – Member of Mahila Dakshata Samiti and P.W. No. 12 – PSI corroborated the evidence of the victim in respect of lodging of the report. They both deposed that report Exh. 28 was written down as per the narration of the victim herself. P.W. 3 – Panch witness deposed about the panchnamas and seizures made in his presence from the spot of incident as well as from the house of the accused. P.W. 5 – Medical Officer who conducted medical examination opined that the hymen of the victim was ruptured. Forensic experts team visit the spot of incident and seized some articles of victim and accused.

10. All these witnesses have spoken in support of the prosecution story, so also, considering the fact that the appellant was not released on bail throughout the trial, this cannot be taken as a case, where the sentence should be suspended during the pendency of the appeal.

11. The application stands dismissed.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)